



Legal Aspects of 5150 Holds

Health Program
Law Foundation of Silicon Valley

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Training Roadmap



Legal
Framework for
5150s

Requirements
for Initiating
5150s

Filling Out the
5150 Form

Special 5150
Issues

Law Foundation of Silicon Valley



Mandated by state law to protect rights of mental health consumers

Patients' Rights Advocates for Santa Clara County since 1978

Investigate and resolve complaints regarding denial or punitive withholding of statutory patients' rights

Monitor mental health facilities for compliance with patients' rights provisions

5150 HOLDS: LEGAL FRAMEWORK

LPS Act

The Mechanics of the 5150

Lanterman-Petris-Short (LPS) Act

- Enacted in 1969 to end the inappropriate, indefinite, and involuntary commitment of individuals with mental health disabilities
- Intent was to balance the need for public safety while safeguarding individual rights
- General rule: least restrictive and client-centered treatment (participation in treatment decisions)
- Established patients' due process rights

HOW DOES A “5150” WORK?

What Does a 5150 Do?

- Permits designated persons to impose a 72-hour legal hold on a person believed to need of involuntary psychiatric treatment
- Permits detention/transport (by law enforcement, ambulance, or other authorized person) of person to a facility for purpose of mental health assessment and evaluation. Not an automatic admission.

What Does a 5150 Do? (cont'd)

- Upon assessment, client either:
 - REMAINS on 5150 for further evaluation and treatment OR
 - Is DISCHARGED from 5150, and admitted as voluntary patient OR given crisis intervention and connected with outpatient services on a voluntary basis.
- 5150s DO NOT authorize
 - Involuntary administration of medication or
 - Involuntary medical treatment or procedures
- No patient right to hearing in the hospital during a 5150 hold

Who can initiate a 5150?

“Peace Officers”

- Police Officers
- Sheriff Deputies
- State Park Rangers
- State University Peace Officers,
- Etc.

Persons Approved by the Santa Clara Behavioral Health Department

- Authorization is limited to organization you are approved under
- No authorization for private practice

Where Can Persons on 5150s Be Held?

- Persons on 5150s should be transported to a facility **designated** by Behavioral Health Department for involuntary assessment, evaluation, and treatment.
- Persons on 5150s might be transported to non-LPS general acute care hospitals: applicable requirements discussed later in training.

Designated Facilities in Santa Clara County

Santa Clara
Valley Medical
Center (EPS)

Pacific Clinics
(17 & Under)

VA Palo Alto

Stanford
Hospital

El Camino
Hospital -
Mountain View

San Jose
Behavioral
Health

Crestwood
PHF

Kaiser PHF
Santa Clara

Who are we holding?

- Brothers, sisters, children, mothers, employees, & fathers
- Consider the terms: Patients vs Clients vs Victims, vs Consumers or Subjects
- What the hold can mean for people:
 - Loss of income/job
 - Missing important events
 - Subject to upsetting and/or traumatic experiences: handcuffs, seclusion and restraint, violence
 - Condition may worsen initially

LEGAL REQUIREMENTS FOR INITIATING A “5150”

Criteria for Writing a 5150

When a person,

- **“as a result of a mental health disorder”**
- **“is a danger to others, or to himself or herself, or gravely disabled,”**

a designated person may

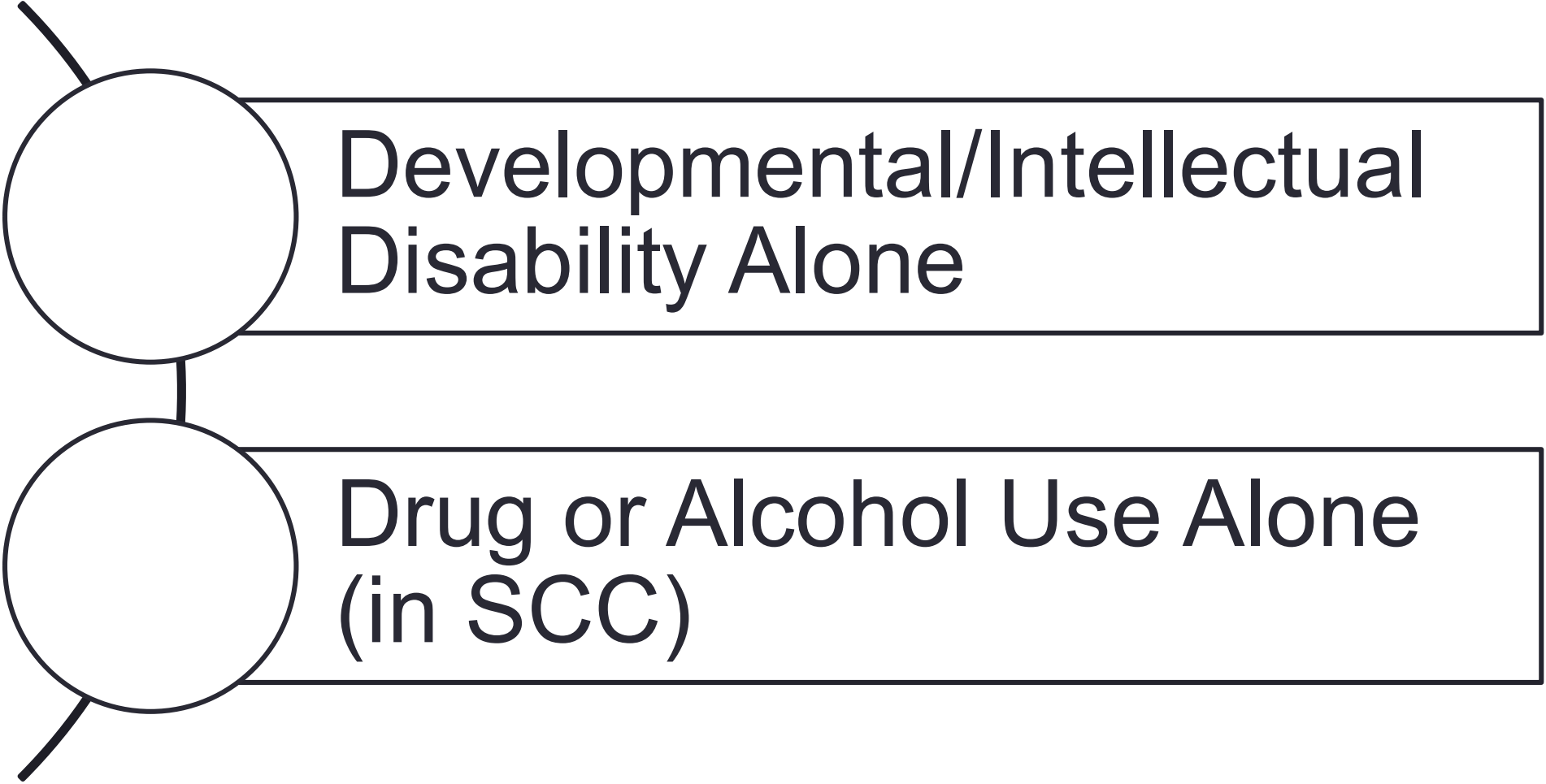
- **“upon probable cause,”**

take . . . the person into custody for a period of up to 72 hours.

Nexus Requirement: “As a result of a mental health disorder”



What Is Not “As a Result of a Mental Health Disorder?”



Developmental/Intellectual Disability Alone

Drug or Alcohol Use Alone
(in SCC)

DANGER TO SELF,
DANGER TO OTHERS,
GRAVE DISABILITY

What is “Danger to Self”?

- “Threats or actions which indicate the intent to commit suicide or inflict serious bodily harm on oneself, or actions which place the person in serious physical jeopardy, and which proceed from a mental disorder.”

What is “Danger to Others?”

- “Words or actions which indicate a serious intent to cause bodily harm to another person, and which owe to a mental disorder. If the danger to others finding is based on the person’s threats rather than acts, the evaluator must believe it is likely that the person will carry out the threats.”

What is “Gravely Disabled”?

- “A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.”
(Welf. & Inst. § 5008 (h)(1)(a))
- Homelessness alone does NOT constitute grave disability.
Skills/abilities test, not means test.

Grave Disability: Minors

- A minor is gravely disabled, if, “as a result of a mental disorder, [the minor] is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others.”
- (Welf. & Inst. Code § 5585.25)

Grave Disability: Incarcerated Persons

- Unable to take advantage of the food, clothing, and shelter provided to them in custody.
- In Santa Clara County Jails, authorized mental health professionals initiate 72-Hour holds. Persons in custody who are on 72-hour holds must be housed on Unit 8A.

Grave Disability: Special Considerations

- Odd or eccentric behavior is not equivalent to grave disability
- Behavior must be viewed through cultural lens
- Courts have ruled that if a person can survive safely in freedom with the help of willing and responsible family members, friends, or third parties, then he or she is not considered gravely disabled

Grave Disability Expansion: SB43

- SB43 implementation has been delayed in Santa Clara County
- For now, no changes to the definition and no impact on how you write holds

Person Must Presently Meet DS/DO/GD Criteria

Conservatorship of Benvenuto, 180 Cal. App. 3d 1030 (1986): Experts testified that a Mr. Benvenuto, was gravely disabled because he might stop taking medications and become gravely disabled.

- Court Said: Finding people gravely disabled because of a concern of future decision to stop medication would be a deprivation of “liberty based on probabilistic pessimism.”

What is “Probable Cause”?

- Probable cause is:
 - A state of facts known to you
 - that would lead a person of ordinary care and prudence (**reasonable person**)
 - to believe or entertain a strong suspicion
 - that person detained as a result of a mental health disorder meets one of the three criteria (GD, DS, DO)

Probable Cause Considerations

Rational inferences

- You can make logical conclusions or deductions based on facts presented.

Historical course of illness

- ONLY IF the information is RELEVANT and has a "REASONABLE BEARING" on whether the person meets 5150 criteria

Third party statements

- Must have a "REASONABLE BEARING" on 5150 criteria.
- Third parties are liable if they intentionally provide you with false information.

Describing Behavior on 5150 Form

- A 5150 is a LEGAL rather than a clinical document
- Statements need to be anchored in observable, describable behavior
 - Remember: Link between behavior and mental illness
 - Symptoms vs. Behavior

FILING OUT THE 5150

FILLING OUT THE 5150

- You must fill out your name, title, language, and date of advisement
- To the receiving facility you must:
 - Write the name of designated facility the person is going to
 - The person's name AND address

Advisement Completed By: Kathryn Parlet	Position: LMFT LPCC	Language or Modality Used: English	Date of Advisement: 03/26/2019
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To (*name of 5150 designated facility*): EPS

Application is hereby made for the assessment and evaluation of Vincent Van Gogh
residing at 54, Rue Lepic in Paris, France, California, for up to 72- hour
assessment, evaluation and crisis intervention or placement for evaluation and treatment at a designated
facility pursuant to Section 5150, et seq. (adult) or Section 5585 et seq. (minor), of the W&I Code. If a
minor, authorization for voluntary treatment is not available and to the best of my knowledge, the legally
responsible party appears to be / is: **(Check one)**: **Parent**; **Legal Guardian**; **Conservator**;
 Juvenile Court under W&I Code 300; **Juvenile Court under W&I Code 601/602**.

If known, provide names, address and telephone numbers in area provided below:

Make sure to fill out the checkbox stating you completed the advisement. If you were unable to complete the advisement indicate the good cause for the incomplete advisement.

State of California
Health and Human Services Agency

Department of Health Care Services

**APPLICATION FOR ASSESSMENT, EVALUATION, AND
CRISIS INTERVENTION OR PLACEMENT FOR EVALUATION
AND TREATMENT**

Confidential Client/Patient Information

See California W&I Code Section 5328 and HIPAA Privacy Rule
45 C.F.R. § 164.508

Welfare and Institutions Code (W&I Code), Section 5150(f) and (g), require that each person, when first detained for psychiatric evaluation, be given certain specific information orally and a record be kept of the advisement by the evaluating facility.

Advisement Complete **Advisement Incomplete**

Good Cause for Incomplete Advisement:

DETAINMENT ADVISEMENT

My name is Kathryn Parlet
I am a (peace officer/mental health professional) with (name of agency).
You are not under criminal arrest, but I am taking you for examination by mental health professionals at (name of facility).
You will be told your rights by the mental health staff.

If taken into custody at his or her residence, the person shall also be told the following information:

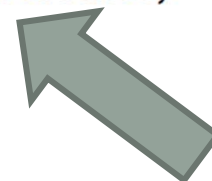
You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.

Advisement Completed By: Kathryn Parlet	Position: LMFT LPCC	Language or Modality Used: English	Date of Advisement: 03/26/2019
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If known, provide names, address and telephone numbers in area provided below:



The above person's condition was called to my attention under the following circumstances:

Patient's girlfriend phoned 911 to report he had cut off his ear.
She received the ear in the mail on 09/16/17. He was treated at the
hospital and then taken to the jail where he was referred to mental health
by medical.

- Explain with specific facts as to what happened.
- Examples:
 - "I was called in to a residence because there was a domestic dispute"
 - "Patient posted on Facebook that he was going to harm himself"

I have probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself/ herself, or gravely disabled because: (state specific facts):

Patient says, "I would do it again. I love her...The voices told me
that if I tried to cut off my ear she would know it and love me back...
I will kill myself if she is not with me...I am going to cut my other ear
off and hang myself if that does not work."

(CONTINUED ON NEXT PAGE)

Describe your reasons for why the person meets the criteria

**APPLICATION FOR 72 HOUR DETENTION FOR EVALUATION AND TREATMENT
(CONTINUED)**

Historical course of the person's mental disorder:

I have considered the historical course of the person's mental disorder

Patient reports periods of depression, but has never received treatment. No other information is available.

Patient does not want his family contacted.

No reasonable bearing on determination

No information available because: _____

History Provided by (Name)	Address	Phone Number	Relation

If you get collateral from anyone, make sure you have their name, address, phone number and their relation to the person being put on the hold!

Based upon the above information, there is probable cause to believe that said person is, as a result of mental health disorder:

A danger to himself / herself.

A danger to others.

Gravely disabled adult.

Gravely disabled minor.

Signature, title and badge number of peace officer, professional person in charge, or other person designated by the county for evaluation and treatment, member of the attorney's crisis team, or professional person designated by the county:

SIGN HERE!!!!

MAKE SURE THAT YOU CHECK OFF THE GROUNDS THAT APPLIES!

X Kathryn Parlet

Kathryn Parlet

Name of Law Enforcement Agency or Evaluation Facility/Person:

Crisis Main Jail Booking

Address of Law Enforcement Agency or Evaluation Facility/Person:

150 West Hedding
San Jose, CA

NOTIFICATIONS TO BE PROVIDED TO LAW ENFORCEMENT AGENCY

Notify (officer/unit & telephone #): _____

NOTIFICATION OF PERSON'S RELEASE IS REQUESTED BY THE REFERRING PEACE OFFICER BECAUSE:

- The person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint

Clinical

- Patient was anxious and paranoid
- Patient is having AH
- Patient is hallucinating



Factual

- Patient was pacing back and forth worrying that he was being followed
- Patient shares that he is hearing the voice of an angel telling him how to hurt himself.
- Patient states that he is seeing his dead grandmother in his bedroom

SPECIAL 5150 ISSUES

Altering a 5150

- A 5150 can be altered by filling out another 5150 and writing **AMENDED** on the top and using the same dates as the **ORIGINAL 5150**

No Consecutive 5150s

- Nothing in LPS authorizes consecutive 5150 holds
- Under AB 2275, people held for more than 72 hours under Section 5150 have right to a hearing and to petition for a writ of habeas corpus

5150 Hearing Procedures

- Must notify Law Foundation right away once someone has been held for more than 72 hours under section 5150
- 5150 hearing must be held within seven days of the date the person was initially detained
- Detained person should be informed of their right to a hearing and to file a writ, and that the Law Foundation will be calling them to discuss their rights and options

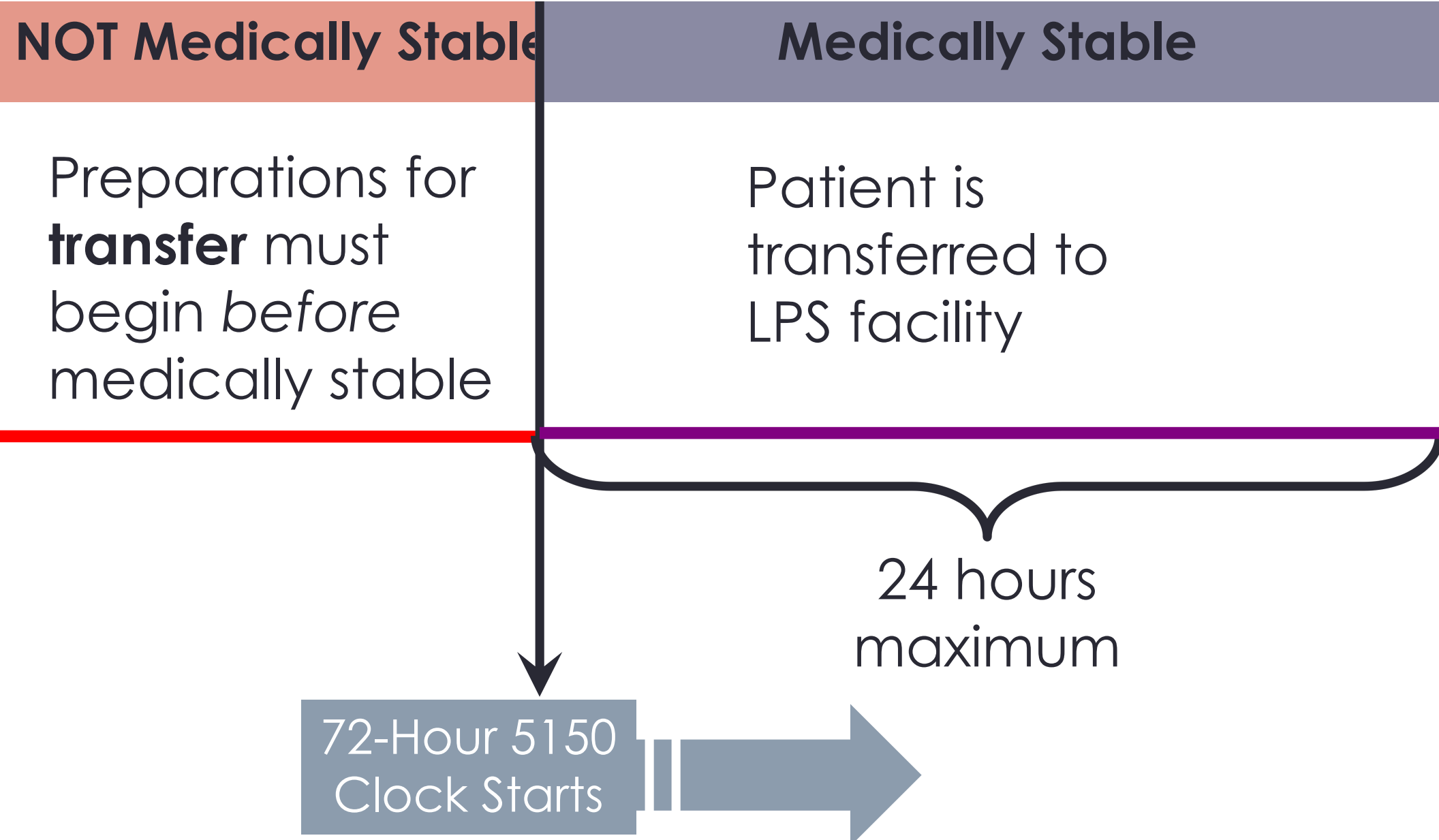
Can people held on a 5150 be transferred outside the county?

- If detained person has **not** filed writ, transfer to a facility outside the county **allowed**
- If detained person **has** filed writ, transfer to a facility outside the county **not allowed**

Some Guidelines for Non-LPS Designated Hospitals

- Immunity from detaining a person involuntarily only extends up to 24 hrs after medical stabilization, and only when certain requirements are met
- Hospital must provide ongoing assessment, evaluation, and crisis intervention
- Clocking 5150 hold: under AB 2275, the 5150 starts when the person is first detained

Arranging Transfer on a “24 Hour Bed Hold”



5150s & LPS Conservatees

- Persons conserved under the LPS Act do not require 5150 in order to be detained/transported for acute-level mental health treatment
- Need only authorization from conservator (e.g. Deputy Public Guardian, or court-appointed private conservator)

Liability & 5150 Writers

- Strong protections for 5150 writers:
 - Liable only if you knowingly or willfully detain an individual in violation of the statutes
 - NOT liable for actions by a person released before the end of the 72- hours (WIC § 5154, 5259.3)
- Liability for a third party providing information:
 - Liable only if s/he knowingly provides false information leading to a 5150 detention

Confidentiality

- A 5150 is part of patient's medical record
- Therefore, same broad confidentiality standards under LPS, HIPAA apply
- Exceptions to confidentiality protections are limited (e.g. for police and current treatment providers).

Culturally Informed Interventions

- People from different linguistic backgrounds may use different words to describe symptoms
- Behavior must be viewed through cultural lens
- Cultural Humility: involves an ongoing process of self-exploration and self-critique combined with a willingness to learn from others. It means entering a relationship with another person with the intention of honoring their beliefs, customs, and values. It means acknowledging differences and accepting that person for who they are.

Reduce Stigma

Stigma creates an environment of shame, fear, and silence that prevents many people from seeking help and treatment. Stigma is the largest barrier to people seeking mental health treatment.

Types of Stigma

- Public
- Institutional
- Self

How does it play into the 5150 process?



EVERYONE CAN PLAY A ROLE

- > Use respectful language to talk about mental health conditions.
- > Challenge misconceptions when you see or hear them.
- > See the person, not the condition.
- > Offer support if you think someone is having trouble.



AVOID LABELS SUCH AS THE FOLLOWING:

- > Challenged
- > Crazy
- > Demented
- > Lunatic
- > Normal/not normal
- > Psycho/psychopath
- > Schizo
- > Special
- > Sufferer/victim
- > Wacko

USE RESPECTFUL LANGUAGE THAT DOES NOT DEFINE SOMEONE BY AN ILLNESS:



INSTEAD OF...

She's bipolar
Schizophrenic
Manic depressive
The mentally ill
Committed suicide

TRY...

She has bipolar disorder/She's living with bipolar disorder
person with schizophrenia
person with bipolar disorder
people with a mental illness/mental health condition
died by suicide





Reminder on Accessibility

- If the patient is being sent from the street with a wheelchair or bicycle, it is the your responsibility to take it to the facility, or find a safe place to store it.

When writing a hold at a home

“You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.”



The evaluator must ensure that:

- the resident area is secured; windows and doors should be locked.
- You are responsible to help with pets. Either help them make arrangements for care, or make arrangements for the pet's care.



San Jose Animal Shelter
(408)794-7297

San Jose Cupertino Los Gatos
Saratoga Silicon Valley Animal
Shelter (408) 764-0344

Santa Clara County Animal
Shelter (408) 201-0660

Handout on Specific Types of Holds Authorized in Santa Clara County

LPS HOLDS CHART

LPS HOLDS	CRITERIA			COURT PROCEEDINGS
	GRAVELY DISABLED	DANGER TO SELF	DANGER TO OTHERS	
72-HOUR WIC 5150 EVALUATION AND TREATMENT	ONE OR ALL MAY APPLY			<ol style="list-style-type: none"> 1. No probable cause hearing 2. May request Riese hearing (Decision regarding Riese carries through 14-day hold)
14-DAY WIC 5250 3-DAY EXTENSION WHEN CONSERVATORSHIP APPLIED FOR	ONE OR ALL MAY APPLY			<ol style="list-style-type: none"> 1. Probable cause hearing must be held during first 4 days of hold unless patient requests by-pass writ of habeas corpus, 48-hour postponement, signs voluntary or is discharged. 2. Patient may request one writ of habeas corpus hearing at any time during 14-day hold. 3. Riese hearing may be requested anytime during 14-day hold.
ADDITIONAL 14-DAY WIC 5260		"IMMINENT DANGER TO SELF"		<ol style="list-style-type: none"> 1. No probable cause or court hearing required. 2. Original additional 14-day certification form and 2 affidavits must be sent to superior court. 3. Patient may request writ of habeas corpus any time during 14-day period 4. New Riese hearing may be requested anytime during 14-day period.
30-DAY WIC 5270 <i>*Currently not offered in Santa Clara County</i>	ONLY CRITERIA WHICH APPLIES			<ol style="list-style-type: none"> 1. Probable cause hearing must be held during first 4 days of hold unless patient requests by-pass writ of habeas corpus, 48-hour postponement, signs voluntary or is discharged. 2. Patient may request writ of habeas corpus any time during 30-day period 3. New Riese hearing may be requested anytime during 30-day period.
180-DAY WIC 5300 RENEWABLE			"IMMINENT DANGER TO OTHERS"	<ol style="list-style-type: none"> 1. Requires contact with D.A. several days prior to expiration of 14-day hold. 2. Requires the D.A. to file a petition with the court and an evidentiary hearing in court within 4 days or jury trial within 10 days 3. New Riese hearing may be requested anytime during 180-day period.
TEMPORARY CONSERVATORSHIP (T-CON) 30 DAYS TO 6 MONTHS	ONLY CRITERIA WHICH APPLIES			<ol style="list-style-type: none"> 1. Requires application by the treating physician to the Public Guardian's Office 2. Judge reviews application and determines whether to grant or deny temporary conservatorship (T-Con) 3. Patient may request writ of habeas corpus any time during T-Con period 4. New Riese Petition may be filed with County Counsel if no prior Riese hearing
"PERMANENT" CONSERVATORSHIP 1 YEAR RENEWABLE	ONLY CRITERIA WHICH APPLIES			<ol style="list-style-type: none"> 1. Requires court hearing. Physician may be required to testify in court. 2. Patient has the right to jury trial/standard of proof=beyond reasonable doubt 3. Patient may request re-hearing on conservatorship, rights denied, restrictiveness of placement, disabilities imposed once every six months
RE-APPOINTMENT OF "PERMANENT" CONSERVATOR	ONLY CRITERIA WHICH APPLIES			<ol style="list-style-type: none"> 1. Requires conservator petitioning for reappointment and a court hearing 2. Requires concurring opinions of two psychiatrists/psychologists that the person continues to be gravely disabled 3. Conservatee has the right to evidentiary hearing/jury trial. Proof-beyond reasonable doubt



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- Free legal services and advice to mental health consumers of Santa Clara County
- Provides assistance with Public Benefits such as SSI, SNAP, and Calworks